

Appl. No. 09/829,794
 Response to Notice of Non-Complaint Appeal Brief

**IN THE UNITED STATES
 PATENT AND TRADEMARK OFFICE**

Appl. No. : 09/829,794
 Applicants : Nicholas REGENT
 Filed : 10 April 2001
 TC/A.U. : 2618
 Examiner : Raymond S. Dean
 Atty. Docket : FR-000036

Title: PORTABLE COMMUNICATION DEVICE WITH AN
 AUTOMATIC OPERATION-KEEPING SYSTEM
 AND METHOD OF KEEPING SUCH A DEVICE IN
 OPERATION

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On: 8 June 2007By: 
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RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

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Sir:

In response to the "Notice of Non-Compliant Appeal Brief" dated 8 February 2007 in response to the Appeal Brief filed on 24 October 2006 in response to the Office Action dated 30 May 2006, finally rejecting pending claims 1-22, and in support of the Notice of Appeal filed on 24 August 2006, Applicant hereby submits this Response.

Applicant respectfully traverses the statement that the Appeal Brief is defective and fails to comply with 37 C.F.R. § 41.37(c)(1)(v), for at least the following reasons.

The "Notice of Non-Compliant Appeal Brief" states that the Appeal Brief filed 24 October 2006 is defective and fails to comply with 37 C.F.R. § 41.37(c)(1)(v) because:

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"Dependent Claims 2-5, 7-14, 16-20 are argued separately by Applicants in the Appeal Brief in which the summary of claimed subject matter does not set forth the structure material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page(s) and line number(s) and to the drawing(s), if any, by reference characters."

At the outset, Applicant does NOT argue separately any of the claims 4-5, 7-14, 16-20 or 22. For example, with respect to claim 22, the Appeal Brief states:

"Claim 22 depends from claim 21 and is deemed patentable for at least the reasons set forth above with respect to claim 21."

How can that POSSIBLY be construed as arguing claim 22 separately????

Quite simply, it can't. Similar statements appear throughout the Appeal Brief for all of the claims 4-5, 7-14 or 16-20, none of which have been argued separately.

Thus, Applicant specifically traverses the statements that Applicant argues claims 4-5, 7-14, 16-20 and 22 separately in the Appeal Brief.

So only claims 2 and 3 have been argued separately in the Appeal Brief.

Now, contrary to what is written in the "Notice of Non-Compliant Appeal Brief," 37 C.F.R. § 41.37(c)(1)(v) actually requires that:

"For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and

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to the drawing, if any, by reference characters."

(Emphasis added). Applicant respectfully notes that the emphasized language above is totally absent from the text in the "Notice of Non-Compliant Appeal Brief."

Now, claims 2 and 3 only include a single means-plus-function element under 35 U.S.C. § 112, sixth paragraph – the automatic updating means. Claims 2 and 3 each depend from claim 1, and each recite "*THE* automatic updating means," clearly finding their antecedent basis back in claim 1 where "means for automatically and periodically updating the start time." Meanwhile, this automatic updating means is very clearly "*identified and the structure, material, or acts described in the specification as corresponding to each claimed function . . . set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters*" by the Appeal Brief at page 2, lines 27-28 ("means (e.g., element 12 – page 5, lines 6-7) for automatically and periodically updating the start time to be greater than said current time (e.g., page 6, lines 3-5)").

Accordingly, Applicant respectfully submits that the Appeal Brief is fully compliant with 37 C.F.R. § 41.37(c)(1)(v).

CONCLUSION

For all of the foregoing reasons, Applicant submits that the Appeal Brief filed 24 October 2006 is totally compliant with 37 C.F.R. § 41.37 and respectfully requests that the Notice of Non-Complaint Appeal Brief be withdrawn.

Applicant also submits that claims 1-22 are all patentable over the cited prior art. Therefore, Applicant respectfully requests that claims 1-22 be allowed and the application be passed to issue.

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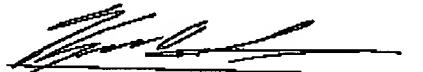
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17, particularly extension of time fees, and any fees under 37 C.F.R. § 41.20, and specifically any additional fee required for filing this Appeal Brief.

Respectfully submitted,

VOLENTINE FRANCOS & WHITT, P.L.L.C.

Date: 8 June 2007

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